

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

WILLIAM JOSE MELENDEZ-SANCHEZ

Debtors

CASE NO. 15-04556-ESL13

CHAPTER 13

MOTION REQUESTING SURRENDER OF NONRESIDENTIAL REAL PROPERTY
TO THE HONORABLE COURT:

NOW COMES MR Plaza U, LLC (hereinafter "MR Plaza"), a party in interest, through its undersigned attorney and very respectfully states and prays:

1. On October 30, 2015, MR Plaza purchased from Plaza U, Inc. the nonresidential real property located at #107 Universidad Ave., Rio Piedras, Puerto Rico, that is described in the Spanish Language as follows:

"URBANA: Solar de una cabida de dos mil quinientos cincuenta y cinco punto tres nueve cero dos (2,555.3902) metros cuadrados, equivalente a punto seis cinco cero dos (0.6502) cuerdas, en lindes; por el NORTE, en una alineación de cincuenta y nueve punto tres tres uno (59.331) metros lineales (en guarismo expresa cuarenta y nueve punto tres tres uno (49.331) metros lineales), con calle Domingo Cabrera; por el SUR, en una alineación de cuarenta y ocho punto siete cero dos (48.702) metros lineales con la Avenida Universidad; por el ESTE, en dos (2) alineaciones que suman cincuenta y uno punto cinco tres tres (51.533) metros lineales con terrenos de Alfonso González Cabrera y Roque Luciano; y por el OESTE, en dos (2) alineaciones que suman cincuenta punto siete ocho tres (50.783) metros lineales con terrenos de Raúl Santiago y Luis Rivera." See Exhibit 1 to the Informative Motion filed by U-Plaza, Inc., on December 15, 2015, (Docket 41-1)

2. Said property is recorded at page 7 of volume 1244 of Rio Piedras Norte, Second Section of San Juan, Real Property Registry of Puerto Rico, and is identified as property number 35,016. See Docket 41-1.

3. Debtor William Jose Melendez-Sanchez occupies lots 1 and 5 and the parking lot of the nonresidential real property described above under a Lease Agreement executed with the previous owner, U-Plaza, Inc. See Schedule G (Docket No. 22, page 12) and Debtor's Motion Opposing U-Plaza's Motion Requesting Order under 11 USC §362(b)(10), page 10, ¶¶12-13 (Docket No. 26).

3. On December 15, 2015, U-Plaza, Inc. filed an Informative Motion notifying the sale of the nonresidential real property described above to MR Plaza. See Docket No. 41.

4. Although the present case was filed on June 26, 2015, the Debtor under Chapter 13, did not assumed or assigned the Lease Agreement between Debtor and the previous owner of the nonresidential real property described above, U-Plaza, Inc. Moreover, the Court has not extended the period to assume or reject unexpired leases of nonresidential real property, which as of this date has elapsed.

5. Under 11 U.S.C. §365(d)(4)(A):

"Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.. " 11 U.S.C. §365(d)(4)(A)

6. Since more than a 120 days have elapsed since the date when Debtor filed his Petition for Bankruptcy in the present case, since the Debtor or the Trustee has neither assumed nor assigned the Lease Agreements of lots 1 and 5 and of the parking lot of

the nonresidential real property mentioned above, within the prescribed period of time and since the Court has not extended the term to assume unexpired lease of nonresidential real property, said lease must be deemed rejected and the trustee shall immediately surrender said properties.

7. Moreover, this Honorable Court should also order that the reasonable value for the use of the premises during the period between October 31, 2015 and the date when the property in question is finally surrendered be paid to MR Plaza as an administrative expense. In re: Empresas Colón Alicea, Inc., 2014 Bankr. LEXIS 280 (Bankr. DPR, Jan. 17 2014)

8. The Lessor reasonable value for the use of the premises is estimated in the amount of the rent of \$5,000.00 per month until the premises are finally surrendered.

9. Finally, It is also important to bear in mind that Debtor has not signed any agreement with MR Plaza for the lease of the premises that he occupies in the property described above and that MR Plaza does not waive the right to any additional remedy against debtor under any other provision of law.

10. In compliance with Local Rule 9013-1(c)(1), you are notified that:

“Within fourteen (14) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed.R.Bank.P. 9006(f) if you were served by mail, any party against whom the attached copy of the Motion Requesting Surrender of Nonresidential Real Property has been served, or any other party to the action who objects to the relief sought therein, shall serve and file an objection or other appropriate response to said request with the Clerk’s office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the request mentioned above will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.”

WHEREFORE, it is hereby respectfully requested that this Court deems the Lease Agreements between Debtor and U-Plaza, Inc., the seller of the nonresidential real property purchased by MR Plaza U, Inc., as rejected and that it orders the surrender of Lots 1, Lot 5, and the parking lot of said property to MR Plaza U, Inc. and that it orders that the reasonable value for the use of the premises during the period between October 31, 2015 and the date when said property is finally surrendered be paid to MR Plaza U, Inc. as an administrative expense.

I HEREBY CERTIFY that, on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the parties appearing in said system, including US Trustee Office and Debtor's Attorneys, Mr. David B. Owen Jimenez, Esq. and Ms. Joselyn M. Ramirez, Esq.

In San Juan, Puerto Rico, this 5th day of January, 2016.

COLÓN CONDE & MIRANDÉS

Attorneys & Counselors at Law
1431 Avenida Ponce de León, Suite 401
San Juan, Puerto Rico 00907-4033
Tel. (787)725-2588
Fax. (787)945-7988
e-mail: luis@colonmirandes.com

S/Luis Francisco Colón Conde
LUIS FRANCISCO COLÓN CONDE
USDC-PR No. 213805